

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

U. S. REPUBLIC COMMUNICATIONS, INC.,
A Texas corporation,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by U.S. REPUBLIC COMMUNICATIONS, INC. of Stafford, Texas ("Respondent"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") on behalf of DAVID A. MCCOLLUM, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices involved Respondent's practice during 1999 of placing charges on consumers' telephone bills for webpages without consumer consent. This practice is commonly referred to as "cramming" and references to cramming within this Assurance shall have that meaning. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act. Respondent disputes the State's characterization of the Respondent's business practices as set forth in paragraph A.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

I. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. U.S. Republic Communications, Inc., a Texas corporation*.

1.2 "Consumer" means any person, a natural person, individual, governmental agency or entity, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

1.4 "Respondent" shall refer to U.S. Republic Communications, Inc., and/or any and all officers, directors, owners, employees, managers, representatives, assigns, partners, parents, subsidiaries, successors, assigns, agents and representatives acting on behalf of U.S. Republic Communications, Inc.

1.5 "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Tennessee Attorney General & Reporter and the Office of the Tennessee Attorney General.

1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

1.7 "Telecommunications Service Provider Act " or "slamming and cramming act" shall refer to the statutes relating to slamming and cramming found at Tenn. Code Ann. § 65-4-125, and the rules promulgated by the Tennessee Regulatory Authority as a result thereof.

II. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order approving this Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

III. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

IV. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondent shall fully comply with the Telecommunications Service Provider Act, Tenn. Code Ann. § 65-4-125, and all Tennessee Regulatory Authority rules and regulations. Without limiting the scope of this provision, Respondent shall fully comply with all Tennessee Regulatory Authority rules regarding cramming.

4.3 Respondent shall fully comply with all Federal Communications Commission rules and regulations. Without limiting the scope of this provision, Respondent shall fully comply with FCC rules and regulations regarding cramming.

4.4 Respondent shall be prohibited from directly or indirectly, billing or collecting or attempting to bill or collect for any charges or services which would violate any provision of this Assurance.

4.5 Respondent shall be prohibited from directly or indirectly depositing or receiving any monies into its accounts which Respondent received or obtained by engaging in any act or practice which violates any term of this Assurance.

4.6 Respondent shall be required to fully comply with all state and federal laws, regulations and rules regarding telemarketing.

4.7 Respondent shall maintain and, as necessary, revise its compliance program to reasonably ensure that proper authorization to initiate charges for new services or goods is given by Tennessee consumers, and to provide for prompt discipline of employees, representatives, agents, marketers, or independent contractors for improper conduct in connection with the marketing, sale, and collection of Respondent's services.

4.8 Respondent shall maintain, and as necessary revise, customer service procedures to reasonably ensure that:

(a) sufficient customer service personnel are available to enable Tennessee consumers to resolve its accounts and complaints promptly;

(b) telephone holding procedures shall not hang up on Tennessee consumers when they call to dispute its charges or service;

(c) Respondent shall not keep Tennessee consumers on hold for more than two (2) minutes;

(d) Tennessee consumers will be able to speak with a customer service representative who will have the authority to credit accounts for the total amount in dispute with supervisor approval, where appropriate, and to correct billing errors as needed;

(e) Respondent shall prominently display Respondent's toll free customer service number on the Tennessee consumer's bill, clearly indicating that all disputes regarding changes in service are to be

directed to that telephone number;

(f) Respondent shall respond to any complaints received from the Office of the Attorney General, the Tennessee Division of Consumer Affairs, the Tennessee Regulatory Authority, and state utility boards or commissions in the time and manner specified therein, which time shall in no event be less than ten (10) business days, or within such time as provided by applicable law.

4.9 Respondent shall not initiate any collection efforts against any Tennessee consumer who has alleged that he/she has been a victim of cramming.

4.10 Without limiting the scope of 4.9, Respondent shall withdraw from collection any Tennessee consumers that Respondent has already begun collection activities where a Tennessee consumer has alleged that he/she has been a victim of cramming.

4.11 Subsequent to the execution of this Assurance, Respondent shall not sell any of its accounts receivable accounts involving Tennessee consumers who allegedly purchased webpage services from the Respondent to any other entity.

4.12 Respondent shall cease efforts, whether through its own employees or through independent agents, to collect charges from any Tennessee consumer who has previously lodged a complaint with any Tennessee or federal authority or agency alleging cramming, or who does so within ninety (90) days of the filing of this Assurance. If Respondent does terminate collection efforts under the terms of this paragraph, it shall notify any credit bureaus that received notice of the original past due account that the customer disputed the charge and the matter has been resolved.

4.13 Within thirty (30) days of the filing of this Assurance, Respondent shall provide the Attorney General with a certified statement from a responsible corporate officer that all corporate officers of Respondent have received a copy of this Assurance.

4.14 Respondent shall be prohibited from, directly or indirectly, offering a prize, gift or award to Tennessee consumers without fully complying with Tenn. Code Ann. § 47-18-120. 4.15 Without limiting the scope of paragraph 4.13, Respondent shall be prohibited from offering a month of free website service and failing to clearly and conspicuously inform Tennessee consumers that the website charges will continue at a cost per month if the Tennessee consumer does not cancel the service and clearly and conspicuously inform the Tennessee consumer of the actual amount of the monthly charge.

4.16 In the initial solicitation and each solicitation thereafter, Respondent shall be required to clearly and conspicuously disclose the verifiable retail value of any prize, gift, award, incentive promotion or other items offered "free" to Tennessee consumers.

4.17 Respondent shall be prohibited from directly or indirectly, representing to Tennessee consumers that certain goods or services will be provided, when such is not the case.

4.18 Without limiting the scope of paragraph 4.16, Respondent shall be prohibited from directly or indirectly representing to Tennessee consumers that the business will receive a web page, when such is not the case.

4.19 Respondent shall be required to fully comply with the Federal Trade Commission Guide Concerning Use of the Word "Free" and Similar Representations Guidelines, 16 C. F. R. 251.

4.20 Respondent shall be prohibited from directly or indirectly continuing to bill Tennessee consumers for goods or services after a Tennessee consumer has contacted Respondent to cancel any alleged "order" of goods or services.

4.21 Respondent shall be prohibited from directly or indirectly violating any state or federal laws, regulations or rules regarding "Don't call lists" such as but not limited to Tenn. Code Ann. § 65-4-401, *et seq.*

4.22 Respondent shall be prohibited from directly or indirectly contacting any of the Tennessee consumers that receive restitution under this Assurance in the future for any marketing purpose.

4.23 Respondent shall be prohibited from directly or indirectly providing false, misleading, deceptive or incorrect information on any Tennessee Regulatory Authority filings or applications. Without limiting the scope of this provision, Respondent shall be required to affirmatively correct, within three (3) business days, any information that changes on all Tennessee Regulatory Authority filings and applications.

4.24 Respondent is prohibited from participating or assisting, directly or indirectly or through any corporation, subsidiary or other entity or intermediary, in the making of any false or misleading representation of any material fact, or omitting material information, either expressly or by implication, orally or in writing, in connection with the promotion, marketing, offering for sale, or sale of services or goods including but not limited to those related to website design, webpage design, or the posting or promulgation of webpages, websites, advertisements or other materials on the Internet, including but not limited to false or misleading representations that:

(a) Respondent shall not charge Tennessee consumers unless Tennessee consumers take affirmative steps to authorize charges during any free trial period;

(b) Respondent shall not assess a recurring monthly charge for any goods or services until thirty days after Respondent has provided Tennessee consumers with clear and conspicuous written information that will easily enable the Tennessee consumers to access and review the website or other goods or services and to cancel the services or goods; and

(c) Tennessee consumers are legally obligated to pay charges for goods or services that have not been

authorized by the Tennessee consumer that Respondent charges or causes to be charged.

4.25 In the event Respondent represents in any promotion, marketing or offering for sale of its services that Respondent will submit websites to specific Internet search engines, Respondent is prohibited from directly or indirectly failing to clearly and conspicuously disclose that such submissions do not guarantee that the referenced search engines will index or list websites.

4.26 Respondent shall be prohibited directly or through any corporation, subsidiary or other entity or intermediary, from sending a bill or causing a bill to be sent to any Tennessee consumer for any product or service without first obtaining express, verifiable authorization that the person being charged has agreed to be charged for the good or service in the amount and manner set forth in the bill which Respondent has sent or caused to be sent to the Tennessee consumer.

4.27 Subsequent to the execution of this Assurance, Respondent shall be prohibited from providing to any person, other than law enforcement authorities or as directed by court order, the name, address, social security number, telephone number, or credit card or bank account number of any Tennessee consumer who, in response to Respondent's promotion of website services, provided such information to or did business with the Respondent, except that Respondent is permitted to post the name, address and telephone numbers of Tennessee consumers that expressly authorize in writing the Respondent to post such information. Subsequent to the execution of this Assurance, such information may be provided to Respondent's agents, affiliates, subsidiaries, successors and assigns provided that such agents, affiliates, subsidiaries, successors and assigns agree in writing in advance of receiving the information not to sell, distribute or otherwise market the information.

4.28 Respondent has informed the Tennessee Regulatory Authority staff that it does not intend to continue to conduct business in the State of Tennessee. However, in the event Respondent continues to do business, it shall be required to give the Tennessee Regulatory Authority and the Attorney General sixty (60) days notice of its intention to commence business in the State of Tennessee. That notice shall include the names under which Respondent plans to conduct business and the details of the nature of any business activities it intends to engage in. Respondent will not bill for any Internet website service on the end users local telephone bill.

V. TENNESSEE REGULATORY AUTHORITY SETTLEMENT

5.1 Respondent understands that its settlement with the Tennessee Regulatory Authority is incorporated as an Agreed Order into this Assurance of Voluntary Compliance as Exhibit A. Respondent agrees to be bound by all the terms set forth in Exhibit A as part of this Assurance.

5.2 As set forth in Exhibit A, the Respondent has paid the sum of Forty-five Thousand Two Hundred Dollars (\$45,200.00) as set forth in the Settlement Agreement entered into before the Tennessee Regulatory Authority in Docket Number 99-0793.

5.3 As a part of Respondent's settlement with the Tennessee Regulatory Authority, Respondent has offered to voluntarily cease offering and providing webpage service to Tennesseans. The Attorney General expressly relies upon this representation and if Respondent fails to cease offering these services in Tennessee, the Respondent is on notice that the State may move to set aside this Assurance or may request that Respondent be held in contempt.

VI. FEDERAL TRADE COMMISSION SETTLEMENT

6.1 Respondent understands that the Stipulated Final Order for Permanent Injunction and Other Equitable Relief with the Federal Trade Commission filed in the United States District Court for the Southern District of Texas, Civil Action No. ____ is incorporated into this Assurance of Voluntary Compliance and Agreed Order as Exhibit B. Respondent agrees to be bound by all the terms set forth in Exhibit B as part of this Assurance.

VII . RESTITUTION

7.1 Within forty-five (45) days of entry of this Assurance Respondent shall provide full and complete refunds including federal, state and local taxes to each Tennessee consumer who has previously lodged a complaint addressing the subject matter of this Assurance with any Tennessee or federal authority alleging cramming. Additionally, any Tennessee consumer that lodges a complaint addressing the subject matter of this Assurance with any Tennessee or federal authority alleging cramming within ninety (90) days of the filing of this Assurance shall be provided full and complete refunds including federal, state and local taxes by the Respondent within forty-five (45) days of receiving the consumer's complaint from the State of Tennessee or the federal agency. Respondent is required to reimburse all charges associated with any web page billings for the above listed consumer including federal, state and local taxes. Respondent will be responsible for refunding the federal, state and local taxes only in those cases where either the consumer, the State, or some entity provides the Respondent with a copy of the consumer's bill or some other accurate calculation of the taxes involved.. If the above listed charges do not reflect all the billings issued to a Tennessee consumer by Respondent, Respondent is still required to reimburse all charges to each Tennessee consumer. Refunds to Tennessee consumers shall be made by check drawn on an account with a sufficient cash balance to fund all refunds or credit issued to the consumer's telephone account through its local exchange carrier. Refunds or credits shall not consist of partial reimbursement of the purchase price.

7.2 Respondent shall also be required to offer Tennessee consumers refunds or credits under the Federal Trade Commission settlement which is attached hereto as Exhibit B. That settlement is fully enforceable by the Davidson County Chancery Court and incorporated as part of this Assurance.

7.3 In the event Respondent is unable to locate Tennessee consumers entitled to a refund under section 7 of this Assurance, those funds due such Tennessee consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds, if any, shall be delivered to the Treasurer prior to the

statutory due date. The Respondent shall provide a report to the Attorney General and Reporter within six (6) months of the entry of the Order which details the amounts delivered to the Treasurer for treatment as unclaimed property under the State statute. The Respondent shall provide all information necessary to the State Treasurer's office to appropriately handle such funds as unclaimed property as set forth by statute and regulation.

7.4 Respondent is responsible for all costs associated with the refund process set forth in subsection 7, including, but not limited to, all costs associated with mailing, all letterhead, envelopes, copying charges, postage and other costs associated with the issuance of refund checks.

7.5 Within six (6) months of entry of the Assurance and Order, Respondent shall file with the Attorney General the following information and shall supplement the information as is necessary:

(a) A report verifying and certifying that eligible Tennessee consumers who were required to receive a refund under this Assurance have, in fact, received a full refund. Additionally, the Respondent shall verify and certify compliance with each provision of this Assurance of Voluntary Compliance and Agreed Order with respect to refunds.

(b) A report verifying and certifying that eligible Tennessee consumers who requested a refund under the Federal Trade Commission restitution program, in fact, received a full refund. Additionally, the Respondent shall verify and certify compliance with each provision of the Federal Trade Commission settlement with respect to refunds. Respondent shall also be required to provide any reports or information that is submitted to the Federal Trade Commission regarding the restitution program to the Attorney General at the same time as those reports are provided to the Federal Trade Commission.

(c) A list of the name and address of each Tennessee consumer who requested a refund or otherwise received a refund under the Federal Trade Commission settlement, the amount of each consumer's refund and the total amount of all refunds provided.

(d) An alphabetical list of the name and address of each Tennessee consumer who requested a refund or otherwise received a refund under this Assurance, the amount of each consumer's refund and the total amount of all refunds provided.

7.6 Within ten (10) business days of receipt of a request from the Division of Consumer Affairs for evidence that a specific consumer or consumers have received the notice envisioned under the Federal Trade Commission Settlement and/or a refund, Respondent shall provide any documents, books and/or records necessary to establish to the satisfaction of the Director of the Division of Consumer Affairs that the refund process has been fully complied with as set forth in this Assurance and Agreed Order approving this Assurance. Within ten (10) business days of entry of this Assurance, Respondent will provide a copy of the notice to Assistant Attorney General Timothy C. Phillips. These documents may include, but shall not be limited to, copies of the fronts and backs of canceled checks and/or mailing records along with certified mail receipts indicating that the identified consumer or consumers received

any required notice and/or a refund. The documents, books or records shall be physically turned over and provided to the Division of Consumer Affairs no later than ten (10) business days from receipt of such request. This paragraph shall in no way limit the Attorney General's, Tennessee Regulatory Authority's or the Division of Consumer Affairs' right to obtain documents, records and/or testimony through any other state or federal law, regulation or rule.

VIII. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

8.1 Respondent shall pay the sum of Five Thousand and 00/100 Dollars (\$5,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the State of Tennessee on the day of execution of this Assurance.

IX. OTHER MONETARY PAYMENTS

9.1 Pursuant to the Tennessee Regulatory Authority Settlement Agreement attached as Exhibit A, Respondent has paid the sum of Forty-Five Thousand Two Hundred and 00/100 Dollars (\$ 45,200.00) to be used for consumer education, TRA regulatory expenses or such other public purpose as the TRA shall determine.

9.2 Respondent shall pay the sum of Four Thousand and 00/100 Dollars (\$4,000.00) to the State of Tennessee as a payment to the General Fund. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the State of Tennessee on the day of execution of this Assurance.

X. MONITORING AND COMPLIANCE

10.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within two (2) weeks of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

10.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of their visit(s) to Respondent in audio or video form without notice to Respondent.

XI. PRIVATE RIGHT OF ACTION

11.1 Pursuant to Tenn. Code Ann. § 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may have against Respondent.

XII. PENALTY FOR FAILURE TO COMPLY

12.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

12.2 Respondent is on notice and has been fully apprised that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce this Assurance and Agreed Order against the Respondent.

12.3 Respondent shall also be subject to any penalties and remedies available to the State of Tennessee through the Tennessee Regulatory Authority for any violations of Exhibit A.

12.4 Respondent shall also be subject to any penalties and remedies available to the State of Tennessee through the Federal Trade Commission for any violations of Exhibit B.

XIII. REPRESENTATIONS AND WARRANTIES

13.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offers, agreements, or inducements of any nature whatsoever have been made to them by the State of Tennessee, their attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

13.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

13.3 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

13.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Tennessee Regulatory Authority or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

13.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

13.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

13.7 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order approving this Assurance, and request that Respondent be held in contempt, if the State so elects.

13.8 U.S. Republic Communications, Inc. represents that it is the true legal names of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and Respondent is on notice that the State may request that Respondent be held in contempt, if the State so elects.

13.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

13.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

13.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition. The Settlement Agreement separately resolves matters pending before the TRA.

13.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to

protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent.

13.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force.

13.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

13.16 The parties waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Respondent further waives and releases any claim it may have against the State, its employees, agents or representatives.

13.17 Respondent has represented and warranted to the State of Tennessee that Respondent U.S. Republic was formed in 1996 to provide reseller long distance services. In 1998, Respondent U.S. Republic began also offering web hosting services to consumers with billing through the local exchange carrier. On or about October 4, 1999, Respondent U.S. Republic sold its web hosting business to Prodigy. During or near December of 1999, U.S. Republic sold its long distance re-seller business to Alliance Communication. Respondent further acknowledges that the State expressly relies upon these representations and warranties, and that if they are false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order approving this Assurance, and request that Respondent be held in contempt, if the State so elects.

13.18 Nothing in this Assurance or the Agreed Order shall be construed to include Prodigy or Alliance Communication to be a party or Respondent, or otherwise bind them, under the terms of this Assurance. This Assurance is not intended to cover either entity or to provide any release of liability to either entity.

XIV. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

14.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules. Further, nothing in this Assurance and Order shall be construed as relieving Respondent from the obligation to comply with any Tennessee Regulatory Authority or Federal Communications Commission tariff, regulation or rule.

XV. FILING OF ASSURANCE

15.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all court costs of filing such Petition, Assurance

and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

XVI. APPLICABILITY OF ASSURANCE TO RESPONDENT

AND ITS SUCCESSORS

16.1 Except as provided in paragraph 13.18 and subject to the definition of Respondent in paragraph 1.4, Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of its officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its behalf.

XVII. NOTIFICATION TO STATE

17.1 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Timothy C. Phillips
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243

For the Respondent:

U.S. Republic Communications, Inc.
c/o VarTec Telecom, Inc.
Melissa Smith
1600 Viceroy Drive
Dallas, Texas 75235

17.2 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date, of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance. Further, for the same period, Respondent shall notify the Office of the Attorney General in writing of the following:

(A) any changes in its residence, mailing addresses, and telephone numbers, within ten (10) business days of the date of such change; and

(B) any changes in its employment status (including self-employment) within ten (10) business days of such change. Such notice shall include the name and address of each business with which such Respondent is affiliated or employed, a statement of the nature of the business, and a statement of the Respondent's duties and responsibilities in connection with the business or employment.

17.3 The State shall receive a copy of any reports or information which relate to Tennessee consumers required under the Federal Trade Commission settlement simultaneous with providing any such reports or information to the Federal Trade Commission. Without limiting the scope of this provision, the Attorney General shall receive a copy of the report set forth in Section IX (B) of the Federal Trade Commission settlement simultaneous with providing any such report to the Federal Trade Commission.

XVIII. COURT COSTS

18.1 All costs associated with the filing of this Assurance and any other incidental court costs incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.